

118 CMR 8.00: PETITION FOR PROTECTIVE ORDER

Section

- 8.01: Scope and Purpose
- 8.02: Non-emergency petitions
- 8.03: Emergency Petitions
- 8.04: Modification or Rescission of Protective Orders

8.01: Scope and Purpose

118 CMR 8.00 establishes the requirements for the filing of a petition for court ordered protective services pursuant to M.G.L. c. 19C, § 7.

8.02: Non-emergency Petitions

Pursuant to the terms and conditions contained in M.G.L. c. 19C, § 7(a), after the initiation of an investigation pursuant to M.G.L. c. 19C and 118 CMR, when the Commission, the general counsel of the Executive Office of Health and Human Services, the Department of Mental Health, the Department of Mental Retardation, or the Massachusetts Rehabilitation Commission, has reasonable cause to believe that a person with a disability is suffering from abuse and lacks the capacity to consent to the provision of protective services, said Commission, counsel, or Department may petition the Probate and Family Court for the county where the person with a disability resides, for a finding that the person with a disability lacks such capacity and requires the provision of protective services.

8.03: Emergency Petitions

(1) Emergency Petitions.

(a) Upon determining that:

1. an emergency exists; and
2. the person with a disability lacks the capacity to consent to the provision of protective services, the Commission, general counsel for the Executive Office of Health and Human Services, the Department of Mental Health, the Department of Mental Retardation, the Massachusetts Rehabilitation Commission, a caretaker or a member of the immediate family of the person with a disability may petition the Probate and Family Court for the county where the person with a disability resides, for an emergency order of protective services.

(b) Each petition for an emergency order of protective services shall contain a statement of the specific facts upon which the petitioner relies seeking such determination.

(2) Emergency Hearings.

(a) Pursuant to the authority granted it by M.G.L. c. 19C, § 7, the Court shall:

1. give notice to the person with a disability who is the subject of the petition at least 24 hours prior to the hearing. The court may dispense with notice upon finding that immediate and reasonably foreseeable physical harm to the person with a disability or others will result from the 24 hour delay and that reasonable attempts have been made to give such notice.
2. appoint counsel to represent the subject of the petition if he or she is indigent;
3. appoint a guardian ad litem to represent the interest of the subject of the petition regarding the right to counsel if the court determines that he or she lacks the capacity to waive the right of counsel;
4. hold a hearing on an emergency petition for protective services no more than 72 hours of its being filed.
5. issue an appropriate order.

(b) No more than 144 hours after the issuance date of the original order authorizing the provision of emergency protective services, the original petitioner may petition the court to:

1. continue emergency protective services with the consent of the person with a disability pursuant to 118 CMR 7.02(a)(1);

8.03: continued

2. continue emergency protective services pursuant to the previously entered order of the court for an additional duration as determined appropriate by the court; or
 3. entertain a petition for the appointment of a guardian or a conservator.
- (c) If the court entertains a petition for the appointment of a guardian or conservator, the court, for good cause shown, may order continued protective services as part of its determination regarding such petition.
- (d) If an order to continue emergency protective services is issued, it must state the services to be provided and designate an individual or agency to be responsible for performing or obtaining the services required by the person with a disability.

8.04: Modification or Rescission of Protective Orders

The person with a disability or his/her court-appointed representative, the Commission, the general counsel for the Executive Office of Human Services, the Department of Mental Health, the Department of Mental Retardation, or the Massachusetts Rehabilitation Commission, may petition the court to have any order issued pursuant to M.G.L. c. 19C, § 7 modified or rescinded.

REGULATORY AUTHORITY

118 CMR 8.00: M.G.L. c. 19C, §§ 3(b) and 7.